



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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**MAY 03 2017**

Patrick Pfaltzgraff, Director  
Water Quality Control Division  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246

Jeff Lawrence, Director  
Division of Environmental Health and Sustainability  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, Colorado 80246

Re: Colorado NPDES FY2016 End-Of-Year Review

Dear Mr. Pfaltzgraff and Mr. Lawrence:

Please find enclosed the final report for the U.S. Environmental Protection Agency's review of Colorado's End-of-Year National Pollutant Discharge Elimination System compliance and enforcement program accomplishments in Federal Fiscal Year 2016. A draft report was shared with your staff in the Water Quality Control Division and Environmental Agriculture Program on April 20, 2017, and we have incorporated the input we received from them to finalize this report.

If you or your staff have questions regarding this report, please contact Michael Boeglin at 303-312-6250 or Stephanie DeJong at 303-312-6362. Thank you for your assistance in completing this end-of-year review and report.

Sincerely,



Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosure



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cc: Kimberly Opekar, EPA  
David Piantanida, EPA  
Kelly Morgan, CDPHE  
Chad DeVolin, CDPHE  
Nathan Moore, CDPHE  
Greg Naugle, CDPHE

cc: greg naugle

**Environmental Protection Agency  
End of Year Review of the  
Colorado Department of Public Health and Environment  
Water Quality Control Division – NPDES Enforcement Program  
FY2016**

**Oversight Level**

EPA Region 8 (the EPA) conducted a baseline level of oversight of the National Pollutant Discharge Elimination System (NPDES) compliance and enforcement program in the state of Colorado during fiscal year 2016 (FY2016). The Colorado Department of Public Health and Environment (CDPHE) Water Quality Control Division and Environmental Agriculture Program were responsible for implementing the NPDES program. EPA's baseline oversight of CDPHE's activities consisted of review and documentation toward meeting performance partnership agreement (PPA) commitments, routine communication and information sharing about inspections and enforcement activity, Quarterly Noncompliance Report (QNCR) review, limited data metrics review, and monitoring CDPHE's follow-up to citizen complaints received by EPA.

**Program Highlights**

- CDPHE interacted with more than 700 regulated entities in the NPDES program in FY2016 to promote compliance with environmental regulations.
- CDPHE issued 49 formal enforcement actions in FY2016 and assessed \$654,671 in penalties for violations of the Clean Water Act.
- CDPHE continued to increase the volume and categories of compliance and enforcement data it enters into the Integrated Compliance Information System (ICIS), the official database of record. Single Event Violations discovered at non-major permittees was the latest category of data to be added.

**Areas of Concern**

1. CDPHE's inspection plan for FY2016 did not meet the EPA's national goals for inspection coverage of stormwater and municipal separate storm sewer system (MS4) permittees. Resource limitations are the state's rationale for this shortcoming. Beginning in FY2017, increased revenue from a new fee bill will enable CDPHE to close most of the gap in the inspection coverage goal for construction sites with stormwater permits; however, inspections of industrial stormwater (non-construction) permittees and MS4s will remain far below the national goals in FY2017. The EPA emphasized its concerns with these shortcomings in a letter to CDPHE dated September 26, 2016.
2. Inspection outputs for major and minor facilities did not satisfy inspection plan commitments for FY2016. More detail on this area of concern appears in the Annual Commitments section below.

## ADMA Results

See *Attachment A* for the Annual Data Metric Analysis (ADMA) compiled using state-entered program data from the Enforcement and Compliance History Online (ECHO). The ADMA shows that in FY2016, CDPHE had satisfactory rates of permit and discharge data entry for its major facilities. See the Annual Commitments section below for a discussion of three program areas in which inspection commitments were not fully satisfied.

The ADMA shows that more than half of all major permittees were noncompliant with their permit during FY2016 (metric 7d1). Eight of those majors were in significant noncompliance (SNC) but did not receive timely action by the state in accordance with federal expectations for timely and appropriate enforcement at majors (metric 10a1). Metrics 7d1 and 10a1 were raised as indicators of areas for state improvement during the FY2015 State Review Framework review of Colorado's program. The EPA is working with CDPHE on follow-up actions to address these findings and will consult these metrics in subsequent years to monitor the state's progress.

## Annual Commitments

EPA reviewed the FY2016 PPA end-of-year report submitted by CDPHE in conjunction with deliverables submitted to EPA throughout the year. EPA's analysis shows that CDPHE satisfied all of its PPA commitments not related to inspections. *Attachment B* identifies the PPA deliverables with their submittal and completion status.

CDPHE's inspection commitments were established in the state's two inspection plans from CDPHE's Water Quality Control Division and Environmental Agriculture Program and incorporated into the PPA workplan. The second column of the table below shows these inspection commitments for FY2016. The third column shows the number of completed inspections reported by CDPHE in the PPA EOY report, whereas the number of inspections CDPHE reported to ICIS appears in the last column. The EPA notes that CDPHE's protocol, as reflected by a commitment in the PPA workplan, is to report nearly all compliance evaluation inspections to ICIS, which is the state's official database of record for NPDES program activities. Minor exceptions in this data entry protocol as well as nuances in how ICIS counts facility inspections explain the discrepancies between CAFO and stormwater construction numbers in the EOY report and ICIS columns below.

	PPA commitment	# Completed (EOY Report)	# Completed (ICIS Database)
Majors	40	*	38
Minors	152	*	110
CAFO	40	49	45
Stormwater construction	83	142	134
Stormwater industrial	26	*	45
Phase II MS4 Audits	0	*	0

\*An inspection tally for these categories was not provided, nor was it required to be provided, in the EOY report.

As the table above shows, inspection commitments for majors and minors were not fully satisfied, based on CDPHE's entry of inspection output data into ICIS. A discussion between the EPA and CDPHE revealed that this shortfall in outputs was due to an ongoing state inspector vacancy.

### **SRF Follow-up**

In 2016 EPA conducted a State Review Framework (SRF) review of CDPHE's NPDES compliance and enforcement program using data from FY2015. The EPA identified findings warranting state improvement actions in the program areas of inspections, violations, and enforcement. Negotiation of action items to address these findings was still underway at the time of this EOY review.

### **Planned Oversight Activities**

A State Oversight Plan describing specific oversight activities planned for FY2017 was provided to CDPHE in February 2017. It was developed in accordance with the *Region 8 State Enforcement Performance Oversight Protocol (FY 2013-17)*. The State Oversight Plan describes baseline plus targeted oversight activities related to ongoing program performance as well as prior year program performance review.

### **Attachments**

*Attachment A:* Annual Data Metric Analysis for FY2016

*Attachment B:* PPA Commitments Evaluation for FY2016



# ATTACHMENT A: ANNUAL DATA METRIC ANALYSIS FOR FY2016

Metric Element ID	Metric Name	Metric Type	National Goal	National Average	CO	Count	Universe	Not Counted	Analysis
Element 1 - Data									
1b1	Permit Limits Rate for Major Facilities	Goal	>= 95%	91.10%	95.20%	119	125	6	Meets expectations. 4 of the 6 facilities not counted were MS4 permittees, which do not have permitted limits. Therefore, this metric calculation was inaccurate and the correct percentage is 98.4%.
1b2	DMR Entry Rate for Major Facilities.	Goal	>= 95%	96.80%	99.60%	5188	5208	20	
Element 2 - Inspections									
5a1	Inspection Coverage - NPDES Majors	Goal metric	100% of state CMS plan	51.90%	30.20%	38	126	88	Minor concern. CMS commitment was 43 facilities. Area of concern. Inspection plan commitment was not met. ICIS data indicates 110, and the inspection plan committed to 152.
5b1	Inspection Coverage - NPDES Non-Majors	Goal metric	100% of state CMS plan	23.90%	24.90%	98	393	295	

Metric ID	Metric Name	Metric Type	National Goal	National Average	CO	Count	Universe	Not Counted	Analysis
5b2	Inspection Coverage - NPDES Non-Majors with General Permits	Goal metric	100% of state CMS plan	5.60%	3.30%	272	8342	8070	Minor concern. Inspection plan commitment for construction stormwater and SSO inspections was not fully satisfied based on ICIS data.
Element 3 - Violations									
7a1	Number of Major Facilities with Single Event Violations	Data Verification				18			Potential concern, as more than half of all majors were noncompliant in FY 2016. Issue is being addressed through the SRF.
7d1	Major Facilities in Noncompliance	Review Indicator		73.30%	56.80%	71	125	54	
7f1	Non-Major Facilities in Category 1 Noncompliance	Data Verification			94				
7g1	Non-Major Facilities in Category 2 Noncompliance	Data Verification			218				
8a2	Percent of Major Facilities in SNC	Review indicator metric		20.30%	14%	18	129	111	
Element 4 - Enforcement									



Element	Metric ID	Metric Name	Metric Type	National Goal	National Average	CO	Count	Universe	Not Counted	Analysis
	10a1	Major facilities with Timely Action as Appropriate	Goal metric	>= 98%	12.60%	11.10%	1	9	8	Potential concern.. 8 facilities in SNC did not receive timely action by the state. Issue is being addressed through the SRF.



## ATTACHMENT B: PPA COMMITMENTS EVALUATION FOR FY2016

The table below identifies the Performance Partnership Agreement (PPA) deliverables and whether the product/project was received and complete.

	PPA Deliverable	Date Due	Received	Complete
1.	PPA end-of-year (EOY) report	12/31/2016	Yes	Yes
2.	CAFO EOY facility inventory with permit and inspection information	12/31/2016	Yes	Yes
3.	Sanitary Sewer Overflow (SSO) inventory, violation and enforcement report	10/15/2016	Yes	Yes
4.	Sharing of final formal enforcement actions with EPA upon issuance	Ongoing	Yes	Yes
6.	FY2017 Inspection Plans for WQCD & EAP, developed during FY2016			
	Draft Plan	9/1/2016	Yes	Yes
	Final Plan	9/30/2016	Yes	Yes

